



**CITY OF WILLMAR, MINNESOTA  
REQUEST FOR COMMITTEE ACTION**

**Agenda Item Number:** \_\_\_\_\_

**Meeting Date:** October 15, 2013

**Attachments:** ☒ Yes ☐ No

**CITY COUNCIL ACTION**

**Date:** October 21, 2013

☐ Approved ☐ Denied  
☐ Amended ☐ Tabled  
☐ Other

**Originating Department:** Engineering

**Agenda Item:** BNSF Grade Crossing Construction and Maintenance Agreement

**Recommended Action:** Approve the agreement as presented.

**Background/Summary:** The attached agreement is a requirement of BNSF Railroad for the construction of the new Willmar Avenue Crossing. It is very similar to the agreement signed for the Trott Avenue Crossing.

**Alternatives:** 1. Approve the agreement  
2. Do not approve the agreement and do not build the crossing.

**Financial Considerations:** The Council previously approved a \$15,000.00 easement payment. BNSF also requires \$2,000.00 for administrative costs.

**Preparer:** Bruce D. Peterson, AICP, Acting Public Works Director

**Signature:**

**Comments:**

**GRADE CROSSING CONSTRUCTION AND MAINTENANCE**  
**AGREEMENT**

BNSF File No.: BF10004011  
Mile Post 1.14  
Line Segment 197  
U.S. DOT Number 067710A  
Marshall Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the City of Willmar, a political subdivision of the State of Minnesota ("**Agency**").

**RECITALS:**

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Willmar, State of Minnesota;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing Willmar Ave at-grade crossing, located at BNSF Line Segment 197 and Milepost 1.18, and designated by D.O.T. No. 067710A, by reconstructing, realigning and widening the roadway, and installing railroad crossing signals and activation equipment within a new roadway easement across the BNSF right-of-way at milepost 1.14 as indicated on the Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment"); and

WHEREAS, the Agency also desires BNSF to install a new crossing surface at Willmar Ave with a new concrete and rubber crossing surface;

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at Willmar Ave;

WHEREAS, the BNSF agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE I)      SCOPE OF WORK**

1. The term "**Project**" as used herein includes any and all work related to the reconstruction/widening/realigning/construction of the Willmar Ave by Agency and installation of crossing signals/activation equipment/new crossing surfaces at U.S. D.O.T No. 067710A, (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A-1, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation and the permanent removal, closure, vacation, and abandonment of the at-grade crossings known as Willmar Avenue, Milepost 1.18, DOT No. 067710A, Line Segment 197, Marshall Subdivision, Twin Cities Division.

## **ARTICLE II)      RAILROAD OBLIGATIONS**

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the Agency's covenants contained herein, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Crossing across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, attached hereto and incorporated herein, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.



Upon receiving the payment from Agency described in the subsequent sentence and provided Agency is in compliance with the terms and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Crossing, substantially in the form of Exhibit B attached to this Agreement. Agency must pay BNSF the sum of Seventeen Thousand and No/100 Dollars (\$17,000) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 8 of this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Removal of the existing surface material and signal equipment at the existing Willmar Avenue crossing at MP 1.18
- (f) Installation of one 88-foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and sidewalks.
- (g) Installation of Crossing Signal Equipment and Crossing Signal Control House as shown on Exhibit A;



(h) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

### **ARTICLE III) AGENCY OBLIGATIONS**

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
3. Agency must acquire all rights of way necessary for the construction of the Project.
4. Agency must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
5. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

- (a) Design and Reconstruction of Willmar Ave;
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
- (c) Installation of advance warning signs in accordance with the MUTCD
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment.
- (g) Construct asphalt/concrete roadway surface on approaches to each track. Roadway surface will match elevation of the Main (and Siding) Track crossing surface(s) and remain level to a point at least thirty (30) feet from nearest rail. Any concrete headers will be constructed no closer than 5'-6"



(preferably 6'-0") from centerline of each track to provide for a minimum of 11'-0" (preferably 12'-0") opening for track and railroad crossing surface;

- (h) Provide and place six (6) to twelve (12) inch wide section of asphalt between roadway concrete headers (and sidewalks) and the new concrete crossing surfaces, including that portion of Willmar Ave located between the Main Track and Siding Track
- (i) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

6. The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.

7. The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.

8. The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

9. The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the C documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.



12. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Engineering Representative, at (763)- 782-3482 and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative at (763)-782-3482 to stop construction at no cost to the Agency or BNSF until these items are completed.

In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

- (c) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III; (ii) the provisions set forth in Article IV; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or



service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

15. Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

16. TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.



17. Agency must take all necessary actions to permanently close, vacate, and abandon, the roadways crossing the right of way known as Willmar Avenue, Milepost 1.18

## **ARTICLE IV)      JOINT OBLIGATIONS**

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by

Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

City Engineer  
City of Willmar, MN  
333 SW 6<sup>th</sup> Street  
Willmar, MN 56201

5. Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify City Engineer for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement. BNSF's Share must be paid upon completion of the Project.

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number BF10004011 and D.O.T. Crossing No. 067710A and must state the time that construction activities will begin.



9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the Willmar Ave roadway.
- (b) Agency will maintain the elevation of the Willmar Ave roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail..
- (c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- (d) Agency will do nothing and permit nothing to be done in the maintenance of the Willmar Ave roadway, which will interfere with or endanger facilities of BNSF.
- (e) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- (h) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.



- (i) If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
  - a) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
  - b) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
- (j) If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable Agency at the time of such replacement is warranted.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Minnesota and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

12. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

13. In the event construction of the Project does not commence within 18 months of the Effective Date, this Agreement will become null and void.

14. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

15. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

16. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

17. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager Public Projects  
80 44<sup>th</sup> Ave NE  
Minneapolis, MN 55421

Agency:

City Engineer  
City of Willmar, MN  
333 SW 6<sup>th</sup> Street  
Willmar, MN 56201

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**AGENCY  
City of Willmar**

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

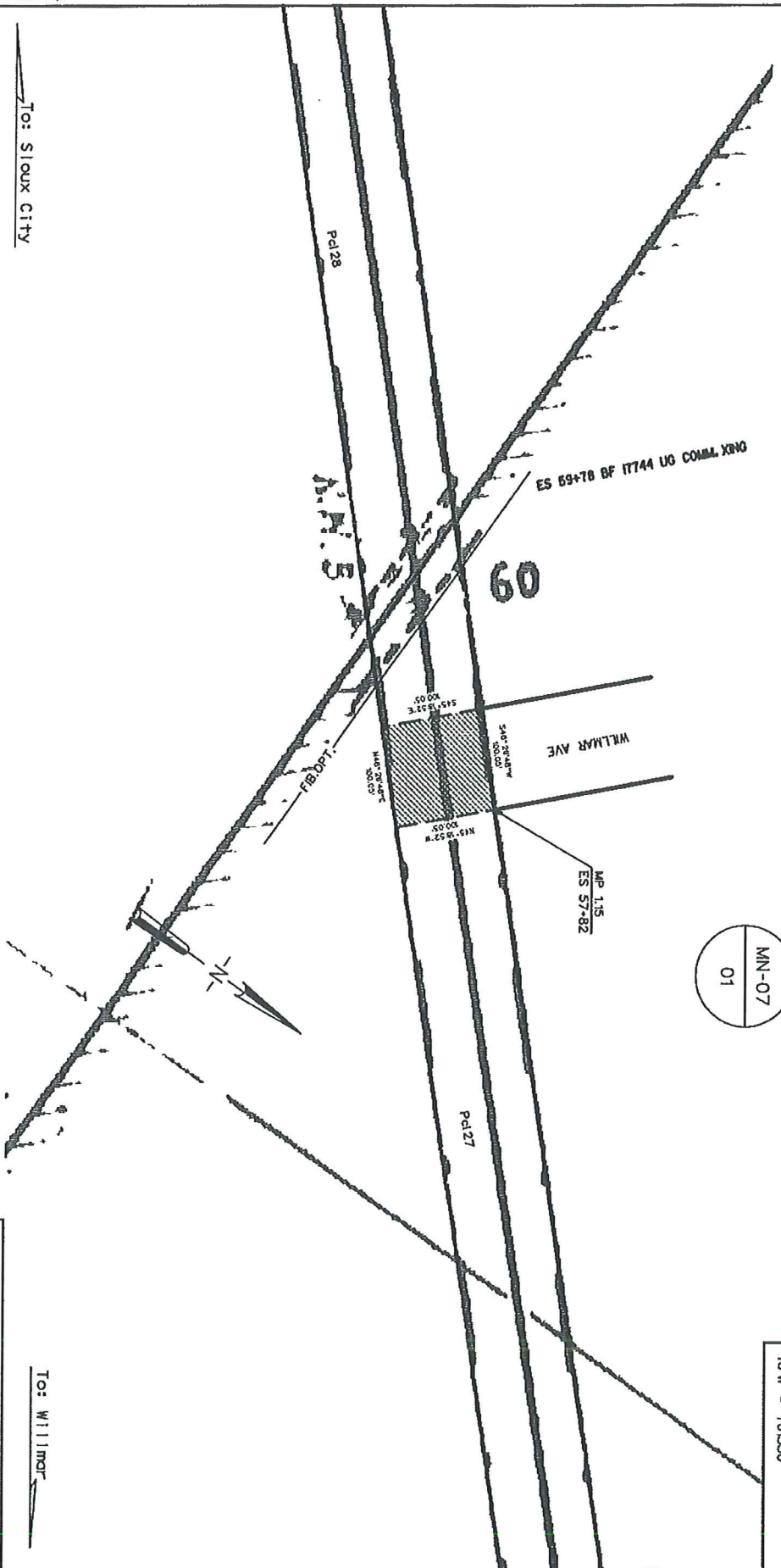
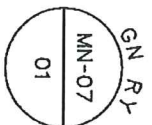


**Exhibit A-1**

Scale: 1" = 100' +/-

# EXHIBIT "A"

Staebach Tracking T1: N/A  
B&W Proj. No.: 02196.003  
MAP REFERENCE:  
Sta. - N/A  
R/W - 761350

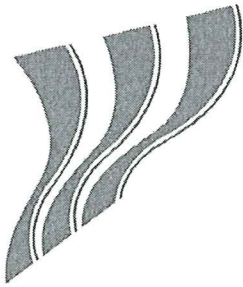


To: City of Willmar  
At: Willmar  
Kandiyohi County,  
Minnesota

Legend:  
Easement Area

Twin Cities Division  
Marshall Subdivision - L.S. 0197-1  
Val. Sec. 69007  
GN RY  
MN-07, Map 01  
Sec. 16, T119N, R35W 5th PM  
March 31, 2009  
M.P. 1.15  
TR

DRAWING NO. 3-46201



**CITY OF WILLMAR, MINNESOTA  
REQUEST FOR COMMITTEE ACTION**

**Agenda Item Number:** \_\_\_\_\_

**Meeting Date:** October 15, 2013

**Attachments:** ☒ Yes ☐ No

**CITY COUNCIL ACTION**

**Date:**

☐ Approved ☐ Denied  
☐ Amended ☐ Tabled  
☐ Other

**Originating Department:** Willmar Police Department

**Agenda Item:** Dangerous Animal Ordinance Proposal

**Recommended Action:**

Request PW/PS Committee to consider adding Article III / Division 3, Sections 4.55 thru 4.66 entitled "Dangerous Animals" to the existing Chapter 4 "Animals" ordinance.

**Background/Summary:** There are no current mechanisms in place to establish the process and procedure necessary to declare an animal as potentially dangerous or as a dangerous animal within the City of Willmar. There is also no declaration or definition of the "animal control authority" for the City of Willmar.

These deficiencies prevent the Willmar Police, the Willmar City Prosecutor, and the District Court from taking the action necessary to protect the public from animals that would otherwise be deemed to be potentially dangerous or dangerous under Minnesota Statute Chapter 347. Specifically, (1) the City lacks a clearly defined procedure whereby animal owners and keepers may be informed that their animal has been determined to be potentially dangerous or dangerous, (2) the City lacks a procedure for citizens to challenge or appeal a dangerous animal classification (due process), and (3) the Court cannot order the destruction and impoundment of potentially dangerous or dangerous animals without a procedure to review the dangerous animal classification.

**Alternatives:** Allow animals that would otherwise be deemed as dangerous animals to remain as a continued threat to the citizens of the community.

**Financial Considerations:** None.

**Preparer:** Chief of Police David Wyffels

**Signature:** *David / Wyffels*

**Comments:** City Attorney Tom Anderson and his Assistant Attorney Samuel Weeks will provide current examples of why this ordinance addition is necessary and to be present to answer questions relating to the proposed addition.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE CREATING CHAPTER 4, ANIMALS, ARTICLE III, DANGEROUS  
ANIMALS

The City Council of the City of Willmar hereby ordains as follow:

Section 1. ADOPTION OF NEW MUNICIPAL CODE SECTIONS 4-55 – 4-64. Chapter 4, Article III of the Willmar Municipal Code is hereby created and shall read as follows:

ARTICLE III. DANGEROUS ANIMALS

**Sec. 4-55. Animal Control Authority.**

- (a) The *animal control authority* means the municipal agency which is responsible for animal control operations in the City of Willmar.
- (b) The animal control authority for the City of Willmar is the Willmar Police Department.

**Sec. 4-56. Definitions**

- (a) *Proper enclosure* means securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the animal from escaping and providing protection from the elements for the animal. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the animal from exiting.
- (b) *Owner* means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of an animal.
- (c) *Provocation* means an act that an adult could reasonably expect may cause an animal to attack or bite.

**4-57. Potentially Dangerous Animals**

- (a) *Definition.* A potentially dangerous animal is an animal which has:
  - (1) When unprovoked, bitten a human or a domestic animal on public or private property; or

- (2) When unprovoked, chased or approached a person upon the streets, sidewalks, or any public or private property, other than the animal owner's property, in an apparent attitude of attack; or
- (3) A known history or propensity, tendency or disposition to attack while unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

(b) *Designation as potentially dangerous animal.* The Animal Control Authority shall designate any animal as a potentially dangerous animal upon receiving evidence that the animal meets any of the criteria in subdivision (a). When an animal is declared potentially dangerous, the Animal Control Authority shall cause the owner(s) of the potentially dangerous animal to be notified in writing that such animal is potentially dangerous. An animal that has been determined to be potentially dangerous must be microchipped in accordance with Section 4-61, licensed in accordance with Section 4-42, and may, at the discretion of the animal control authority, be required to comply with one (1) or more of the following conditions:

- (1) An owner of a dog may be required to complete an approved dog obedience class;
- (2) The animal may be required to be restrained by chain or leash not to exceed six (6) feet in length, and/or muzzled, and under the control of a person eighteen (18) years of age or older at all times it is outdoors and not inside a proper enclosure.
- (3) The owner of the animal may be required to show proof of up to date rabies vaccination and, if required, licensing.
- (4) The owner may be required to sterilize the animal at the owner's expense. If the owner does not have the animal sterilized within the specified time limits, the animal control authority may seize the animal and have it sterilized at the owner's expense.
- (5) If the animal is a dog or cat, the owner shall purchase a proper license.

(c) *Procedure.* The animal control authority shall notify the owner(s) of the animal in writing or in person that the animal has been determined to be potentially dangerous pursuant to Section 4-62 and shall specify what, if any, conditions are being required of the owner. This notice shall state the date, time, place, and parties bitten, chased attacked or threatened by the animal, and shall advise the owner that they have fourteen (14) days to appeal the determination or the imposition of conditions on maintaining the animal by requesting a hearing before the Willmar Public Works and Public Safety Committee.

- (1) If an owner requests a hearing, a date shall be set not more than three (3) weeks after receipt of the demand for a hearing. The committee may consider all records of the animal control authority without the necessity for further foundation. After considering all of the evidence, the committee chair person shall issue a written order which rejects or upholds the determination based upon the majority opinion of the committee. If the committee upholds the determination as potentially dangerous, the order may affirm or modify the conditions recommended by the animal control authority. If as a result of testimony or other evidence at the hearing there are grounds for declaring the animal to be dangerous pursuant to Section 4-58, the committee chairperson may change the designation and issue the appropriate orders.

- (2) If an owner fails to comply with any conditions specified in the order and fails to request a hearing under subdivision (c)(1), the animal shall be seized. The animal may be reclaimed by the owner as set forth in Section 4-59.
- (d) *Subsequent Offenses.* If an owner of an animal which has been declared potentially dangerous and is subject to the conditions of this section fails to comply with the conditions imposed by the animal control authority or the Public Works and Public Safety Committee, the animal must be seized by the animal control authority. Notice shall be provided to the owner of the basis for the seizure and the right to request a hearing before the Willmar Public Works and Public Safety Committee to determine whether the conditions were violated. A request for hearing must be made within fourteen (14) days of the seizure. If the owner fails to request a hearing within fourteen (14) days, or is found to have violated the conditions, the Willmar Public Works and Public Safety Committee may order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the owner is found not to have violated the conditions, the owner may reclaim the animal under the provisions of Section 4-59.
- (e) *Review of Designation.* The animal control authority may review the status of an animal which has been determined to be potentially dangerous if a period of two years has passed without any further incidents under section (a) above and may use discretion in determining whether any conditions which have been ordered are still required. After the initial two year period, an owner may request a review annually. The owner must provide evidence that the animal's behavior has changed due to the animal's age, sterilization, environment, completion of obedience training that includes modification of aggressive behavior, or other factors.

#### **Sec. 4-58. Dangerous Animals.**

- (a) *Definitions.* A dangerous animal is an animal which has:
- (1) Without provocation caused substantial bodily harm to any person on public or private property. Substantial bodily harm means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the functions of any bodily member or organ, or which causes a fracture of any bodily member.
  - (2) Killed a domestic animal without provocation while off the owner's property;
  - (3) Been found to be potentially dangerous pursuant to Section 4-57, and after the owner has notice that the animal is potentially dangerous, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals;
  - (4) Bitten one (1) or more persons on two (2) or more occasions; or
  - (5) Fresh wounds, scarring, or is observed in a fight, or has other indications which to a reasonable person evidence that the animal has been or will be used, trained or



encouraged to fight with another animal; or whose owner has in custody or possession any training apparatus, paraphernalia or drugs used to prepare such animal to be fought with another animal.

- (b) *Designation as dangerous animal.* The animal control authority may designate any animal as a potentially dangerous animal upon receiving evidence that the animal meets any of the criteria in subdivision (a).
- (c) *Procedure.* The animal control authority, after having determined that an animal is dangerous, shall proceed in the following manner:
  - (1) The animal control authority shall seize the dangerous animal and notify its owner pursuant to Section 4-62 that the animal has been determined to be dangerous and that the animal is to be destroyed if the owner does not comply with the conditions and requirements of Section 4-59 and applicable state laws. This notice shall state that the owner shall have 14 days to reclaim the animal and appeal the determination by submitting to the City Administrator a written request for a hearing before the city council.
    - (A) If no appeal is filed, the orders issued shall be final.
    - (B) If an owner requests a hearing, a date shall be set not more than three (3) weeks after receipt of the demand for a hearing.
    - (C) Pending a hearing on the determination, the animal may be seized and kept at animal control unless the owner shows proof that the animal is licensed and has a current rabies vaccination, and agrees that the animal will not be permitted to be outside without being in a proper enclosure or being restrained on a leash and wearing a muzzle.
    - (D) The city council may consider all records of the animal control authority without the necessity for further foundation. After considering all of the evidence, the city council shall issue a written order which rejects or upholds the determination of the animal control authority.
    - (E) If no appeal is filed, or if the city council upholds the determination that the animal is dangerous, then the animal control authority may take the animal into custody for destruction, if such animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the animal control authority and failure to do so shall be a misdemeanor.
  - (2) Nothing in this section shall prevent the animal control authority from ordering the immediate seizure and quarantine of a rabies-suspected animal.

#### **Sec. 4-59. Dangerous Animal Registration**

A person may not own a dangerous animal unless the owner obtains a certificate of registration for the dangerous animal from the animal control authority pursuant to this Section. The animal

control authority shall issue a certificate of registration to the owner if the owner presents sufficient evidence that all of the following conditions and requirements are met:

- (a) A proper enclosure exists for the dangerous animal.
- (b) If a dangerous animal is outside of a proper enclosure, the animal must be restrained by a substantial chain or leash and under the physical restraint of a responsible person.  
Depending on the species of animal, the animal control authority may require that the animal also be muzzled when outside of its proper enclosure.
- (c) A dangerous animal must be sterilized at the owner's expense.
- (d) If a person who owns a dangerous animal rents property from another person where the animal will reside, the animal owner must disclose to the property owner that he or she owns a dangerous animal that will live at the property. This disclosure must be made prior to entering a lease agreement and at the time of any lease renewal.
- (e) A surety bond has been issued by a surety company authorized to conduct business in Minnesota in a form acceptable to the animal control authority in the sum of at least \$300,000, payable to any person injured by the dangerous animal, or a policy of liability insurance has been issued by an insurance company authorized to conduct business in Minnesota in the amount of at least \$300,000, insuring the owner for any personal injuries inflicted by the dangerous animal.
- (f) The owner has paid an annual dangerous animal licensing fee of not more than \$500, in addition to regular licensing fees under Section 4-42.
- (g) The owner has had microchip identification implanted in the dangerous animal pursuant to Section 4-62.

#### **Sec. 4-60. Reclamation.**

A dangerous animal or a potentially dangerous animal seized under Sections 4-57 or 4-58 may be reclaimed by the owner of the animal upon payment of impounding and boarding fees, and presenting proof to the appropriate animal control authority that the requirements of Sections 4-57 and/or 4-58 will be met. An animal not reclaimed under this subdivision within seven days may be disposed of in a manner permitted by law, and the owner shall be liable to the animal control authority for costs incurred in confining and disposing of the animal.

#### **Sec. 4-61. Exceptions.**

- (a) *Law Enforcement Exemption.* The provisions of this section do not apply to dangerous animals used by law enforcement officials for police work.
- (b) *Exemptions.* Animals may not be declared dangerous if the threat, injury, or damage was sustained by a person:

- (1) who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the animal;
- (2) who was provoking, tormenting, abusing, or assaulting the animal or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the animal; or
- (3) who was committing or attempting to commit a crime.

#### **Sec. 4-62. Microchip Identification.**

The owner of a dangerous or potentially dangerous animal must have a microchip implanted in the animal for identification, and the name of the microchip manufacturer and identification number of the microchip must be provided to the animal control authority. If the microchip is not implanted by the owner, it may be implanted by the animal control authority. In either case, all costs related to purchase and implantation of the microchip must be borne by the animal's owner.

#### **Sec. 4-63. Notice Requirements.**

- (a) The authority declaring the animal dangerous or potentially dangerous shall give notice of the right to a hearing by delivering or mailing it to the owner of the animal, or by posting a copy of it at the place where the animal is kept, or by delivering it to a person residing on the property, and telephoning, if possible. The notice must include:
  - (1) a description of the seized animal; the authority for and purpose of the dangerous animal or potentially dangerous animal declaration and seizure; the time, place, and circumstances under which the animal was declared dangerous or potentially dangerous; and the telephone number and contact person where the animal is kept;
  - (2) a statement that the owner of the animal may request a hearing concerning the dangerous animal or potentially dangerous animal declaration and, if applicable, prior potentially dangerous animal declarations for the animal, and that failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing under this section;
  - (3) a statement that if an appeal request is made within 14 days of the notice, the owner must immediately comply with the requirements of Sections 4-57 and/or 4-58 until such time as the hearing officer issues an opinion;
  - (4) a form to request a hearing under this subdivision; and
  - (5) a statement that all actual costs of the care, keeping, and disposition of the animal are the responsibility of the person claiming an interest in the animal, except to the extent that a



court or hearing officer finds that the seizure or impoundment was not substantially justified by law.

**Sec. 4-64. Right to a Hearing.**

Any hearing under this Section must be held within 14 days of the request to determine the validity of the dangerous animal or potentially dangerous animal declaration. In the event that the dangerous animal or potentially dangerous animal declaration is upheld by the hearing official(s), actual expenses of the hearing up to a maximum of \$1,000 will be the responsibility of the animal's owner. The hearing official(s) shall issue a decision on the matter within ten days after the hearing. The decision must be delivered to the animal's owner by hand delivery or registered mail as soon as practical and a copy must be provided to the animal control authority.

Section 2. EFFECTIVE DATE. This ordinance shall be effective from and after its adoption and second publication.

Passed by the City Council of the City of Willmar this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

\_\_\_\_\_  
Kevin Halliday, City Clerk

\_\_\_\_\_  
Frank Yanish, Mayor

Vote:        \_\_\_\_ AHMAN        \_\_\_\_ ANDERSON        \_\_\_\_ CHRISTIANSON  
              \_\_\_\_ DEBLIECK        \_\_\_\_ DOKKEN        \_\_\_\_ FAGERLIE  
              \_\_\_\_ JOHNSON        \_\_\_\_ NELSEN

This Ordinance introduced by Council Member: \_\_\_\_\_

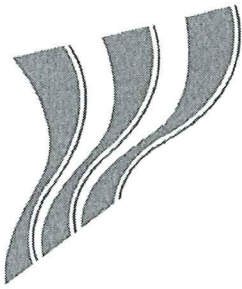
This Ordinance introduced on: \_\_\_\_\_

This Ordinance published on: \_\_\_\_\_

This Ordinance given a hearing on: \_\_\_\_\_

This Ordinance adopted on: \_\_\_\_\_

This Ordinance published on: \_\_\_\_\_



**CITY OF WILLMAR, MINNESOTA  
REQUEST FOR COMMITTEE ACTION**

**Agenda Item Number:** \_\_\_\_\_

**Meeting Date:** October 15, 2013

**Attachments:** ☒ Yes ☐ No

**CITY COUNCIL ACTION**

**Date:**

☐ Approved ☐ Denied  
☐ Amended ☐ Tabled  
☐ Other

**Originating Department:** Willmar Police Department

**Agenda Item:** Dangerous Weapons Ordinance Change Proposal

**Recommended Action:**

Request PW/PS Committee to review changes to the Dangerous Weapons ordinance. Pass on to Council for further consideration and action to be made towards eventual ordinance amendment.

**Background/Summary:** On June 11, 2013, a proposal increasing the valid time limit of for a pest permit and language pertaining to new regulation of the use of bows and arrows within Willmar city limits was introduced for committee consideration. The initial proposal was passed through Committee and on to the City Council. Council referred the matter back to committee.

On July 30, 2013, the committee further reviewed the section of the proposed ordinance related to the proposed regulation of bows and arrows. Sample ordinances of five other similar communities were reviewed. Discussion was held regarding the need for such regulation within the community. A motion was made to adopt language similar to an ordinance currently in place in Hutchinson, Mn. Further direction was given to prepare similar ordinance language for the committee.

City Attorney Robert Scott has prepared the ordinance language as requested with sections (b) and (c) mirroring the Hutchinson ordinance. Section (a) was also added simply to define bows and arrows.

An attachment reflects the requested language and is being presented for review.

**Alternatives:** Provide further direction as to the changes desired or recommend making no change at all to the existing ordinance as it is.

**Financial Considerations:** None.

**Preparer:** Chief of Police David Wyffels

**Signature:** *David J. Wyffels*

**Comments:**



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 10, OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE III, DANGEROUS WEAPONS, SECTION 10-54, DISCHARGE OF FIREARMS AND ADOPTING NEW SECTION 10-55, SHOOTING A BOW AND ARROW WITHIN CITY LIMITS

The City Council of the City of Willmar hereby ordains as follows:

Section 1. AMENDMENT OF MUNICIPAL CODE SECTION 10-54. Chapter 10, Article III, Section 10-54 of the Willmar Municipal Code is hereby amended as follows (deleted material is crossed out; new material is underlined; sections and subsections not being amended are omitted):

**Sec. 10-54. – Discharge of firearms.**

- (c) *Lawful defense, law enforcement.* Nothing in this article shall be construed to ~~embrace~~ prohibit the firing of a gun, pistol, revolver or other kind of firearm when done in the lawful defense of person or family or in the necessary enforcement of the laws.
- (d) *Permit.* Nothing in this article shall be construed to ~~embrace~~ prohibit the firing of a gun, pistol, revolver or other kind of firearm when permission therefor has first been given by the chief of police of the city, which permission shall designate the place where and the time when such firearms may be used. When the applicant for a permit is an individual requesting a permit for purposes of shooting pests on private property, the permit shall only be granted for the use of a pellet gun or twenty-two-caliber rifle using birdshot. No permit shall be granted for more than ~~sixty (60)~~ one hundred eighty (180) days. Every applicant for a permit shall execute a hold harmless agreement, indemnifying the city from all claims that result from the discharge of the firearm. When the applicant for the permit is not the property owner, a hold harmless agreement shall also be executed by the property owner.

Section 2. ENACTMENT OF NEW MUNICIPAL CODE SECTION 10-55. Chapter 10, Article III of the Willmar Municipal Code is hereby amended to include a new Section 10-55 to read as follows:

**Sec. 10-55.—Bows and Arrows**

- (a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in

this section, unless the context clearly indicates a different meaning.

*Arrow* - shall mean any shaft, rod or bolt constructed out of any substance.

*Bow* - shall mean any device designed as or commonly known as a bow, long-bow, compound-bow, or cross-bow and fashioned to propel, thrust or project an arrow, shaft, bolt, or rod beyond one foot of the device itself.

(b) *Shooting of Bows and Arrows Prohibited.* It is unlawful to shoot, discharge or otherwise propel an arrow from a bow in the city except under the conditions listed under Paragraph (c) of this section.

(c) *Exemptions.* Use of bows and arrows in the following circumstances shall be exempted from the general prohibition thereof contained in Paragraph (a) of this section:

- (1) Bows and arrows may be used as authorized in a physical education program in a school when supervised by a member of its faculty;
- (2) Bows and arrows may be used in a community-wide supervised class or event as specifically authorized in advance by the Chief of Police; or
- (3) Bows and arrows may be used in any bow and arrow range specifically established and so designated by the city council.

Section 3. EFFECTIVE DATE. This ordinance shall be effective from and after its adoption and second publication.

Passed by the City Council of the City of Willmar this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

\_\_\_\_\_  
Kevin Halliday, City Clerk

\_\_\_\_\_  
Frank Yanish, Mayor

VOTE: \_\_\_\_\_ AHMANN \_\_\_\_\_ ANDERSON \_\_\_\_\_ CHRISTIANSON  
\_\_\_\_\_ DEBLIECK \_\_\_\_\_ DOKKEN \_\_\_\_\_ FAGERLIE \_\_\_\_\_ JOHNSON \_\_\_\_\_ NELSEN

This Ordinance introduced by Council Member: \_\_\_\_\_

This Ordinance introduced on: \_\_\_\_\_

This Ordinance published on: \_\_\_\_\_

This Ordinance given a hearing on: \_\_\_\_\_

This Ordinance adopted on: \_\_\_\_\_

This Ordinance published on: \_\_\_\_\_